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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/722,955

11/26/2003

Alan P. Halbert

AH1

9010

7590

09/09/2004

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Bluffdale, UT 84065

EXAMINER

ESTRADA, ANGEL R

ART UNIT

PAPER NUMBER

2831

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/722,955

**Applicant(s)**

HALBERT, ALAN P.

**Examiner**

Angel R. Estrada

**Art Unit**

2831

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/17/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show Figures 1-5 and 7-13 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

2. Claims 1-19 are objected to because of the following informalities:

Claim 1 line 7, "a top interface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the planar portion 12a".

Claim 1 line 9, "a side interface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the ends of the planar portion 13a".

Claim 1 line 11, "a rigid member" is not mentioned in the specifications examiner assumes that the applicant is referring to "the planar portion 15a".

Claim 1 line 13, "a mating surface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the recesses 16aa, 16ab"

Claim 16 line 8, "a top interface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the planar portion 12a".

Claim 16 line 9, "a side interface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the ends of the planar portion 13a".

Claim 16 line 11, "a rigid member" is not mentioned in the specifications examiner assumes that the applicant is referring to "the planar portion 15a".

Claim 16 line 12, "a mating surface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the recesses 16aa, 16ab"

Claim 19 line 5-6, "a top interface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the planar portion 12a".

Claim 19 line 6, "a mating surface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the recesses 16aa, 16ab"

Claim 19 line 7, "a side interface" is not mentioned in the specifications examiner assumes that the applicant is referring to "the ends of the planar portion 13a".

Claim 19 line 8, "a rigid member" is not mentioned in the specifications examiner assumes that the applicant is referring to "the planar portion 15a".

Claims 2-15, 17 and 18 are included because of their dependency.

Appropriate correction is required. See MPEP § 608.01 (o) and 37 CFR 1.75 (d)(1).

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/723501. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-19 of Application Number 10/723501 discloses a reinforcement device capable of being secured to the interior of an electrical box comprising a top interface, a side interface, a rigid member and a mating surface, in addition, the application also claims that the bracket is formed of zinc plated sheet or plate steel. It would have been obvious to one of ordinary skill in the art to eliminate the requirement for the bracket to be formed of zinc plated sheet or plate steel, thus making the bracket from any known material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. For example, if the strength of Zinc plated or plate steel weren't required, it would have been obvious to one of ordinary skill in the art to simply use standard sheet steel to save on manufacturing and production costs.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tranas (US 2,562,344), Smolik (US 4,576,302, US 4,483,453, US 4,403,708) and Gretz (US 6,734,356) disclose a device for mounting electrical boxes.

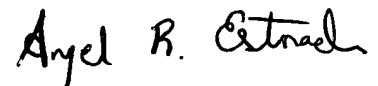
7. Any inquiry concerning this communication should be directed to Angel R. Estrada at telephone number (571) 272-1973. The Examiner can normally be reached on Monday-Friday (8:30 -5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-2800 Ext: 31. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AE

September 4, 2004



Angel R. Estrada  
Patent Examiner  
Art Unit: 2831